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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/011,867	12/05/2001	Clifton A. Alferness	1931-7-3	5299

7590

10/06/2003

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EXAMINER

CHATTOPADHYAY, URM

ART UNIT

PAPER NUMBER

3738

DATE MAILED: 10/06/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/011,867

Applicant(s)

ALFERNES ET AL.

Examiner

Urmi Chattopadhyay

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 June 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-43 is/are pending in the application.
- 4a) Of the above claim(s) 3, 12, 21, 31 and 42 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 23-30, 32-41 and 43 is/are allowed.
- 6) ☒ Claim(s) 1, 2, 6-11, 15-20 and 22 is/are rejected.
- 7) ☒ Claim(s) 4, 5, 13 and 14 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 December 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 5, 6.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

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DETAILED ACTION

Response to Amendment

1. The amendment filed 6/11/03 has been entered as Paper No. 4. The changes made to claims 18 and 39 have been approved by the examiner.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1, 2, 7, 8, 10, 11, 16, 17, 19 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Liddicoat et al. (USPAP 2002/0183836 as cited in applicant's IDS) in view of Langberg et al. (USPN 6,402,781 as cited in applicant's IDS).

Liddicoat et al. discloses a device and method for effecting mitral valve annulus geometry of a heart with all the elements of claims 1, 10 and 19, but is silent to a lock that locks the cable on the second anchor. See Figures 8-9 and paragraph [0039] for a device (200) being used in the coronary sinus (30) and including a first anchor (distal-most staple), a cable (210) fixed to the first anchor and extending proximally therefrom, and a second anchor (proximal-most staple) positioned proximal to the first anchor and arranged to slidably receive, through an eyelet, the cable such that the cable (210) spans between first and second anchors. Langberg et al. teaches a mitral annuloplasty device placed within the coronary sinus wherein the device has

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a cable and a lock on the most proximal end of the body (claims 7 and 16) for the cable to go therethrough in order to lock the cable to the device in a remodeling configuration. See Figures 2-2A and column 8, lines 52-63 for a cable (56) and a ratchet lock (70) (claims 8 and 17). It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to look to the teachings of Langberg et al. to modify the device of Liddicoat et al. by replacing the eyehole of the second anchor, which is the most proximal end of the device, for the cable (210) to go therethrough in order to lock the cable to the device in a remodeling configuration.

Claims 2, 11 and 20, see Figures 8-9 for second anchor being configured to be positioned and fixed in the coronary sinus.

4. Claims 6 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Liddicoat et al. and Langberg et al. as applied to claims 1 and 10 above, and further in view of Solem (USPAP 2001/0018611).

Liddicoat et al., as modified by Langberg et al., discloses a device for effecting mitral valve annulus geometry of a heart with all the elements of claims 1 and 10, but is silent to the cable including a pressure distributor, as required by claims 6 and 15. Solem et al. teaches a device placed in the coronary sinus for treatment of mitral insufficiency wherein a cable between to anchor stents has cover that encloses the cable in order to eliminate the risk of the cable injuring the coronary sinus by cutting into its internal surface. This cover structurally provides as pressure distributor. See paragraph [0022]. It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to look to the teachings of Solem et al. to modify the device of Liddicoat et al. and Langberg et al. by having the cable include a pressure

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distributor in the form of a cover in order to eliminate the risk of the cable injuring the coronary sinus by cutting into its internal surface.

5. Claims 9, 18 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Liddicoat et al. and Langberg et al. as applied to claims 1, 10 and 19 above, and further in view of Lashinski et al. (USPAP 2002/0151961).

Liddicoat et al., as modified by Langberg et al., discloses a device for effecting mitral valve annulus geometry of a heart with all the elements of claims 1, 10 and 19, but is silent to the additional limitation of the cable including a coupling configured to releasably connect to a cable tension assembly, as required by claims 9, 18 and 22. Lashinski et al. teaches a device placed within the coronary sinus to remodel the mitral valve annulus wherein a cable (365) includes a coupling (367) configured to releasably connect to a cable tension assembly (combination of 366, 310, 312) in Figures 17B-17C in order for the cable tension assembly to move the cable proximally, which deflects the device to a remodeling configuration. It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to look to the teachings Lashinski et al. to modify the device of Liddicoat et al. and Langberg et al. to have the cable (210) include a coupling configured to releasably connect to a cable tension assembly. By including this coupling to the device of Liddicoat et al., Examiner contends that the cable tension assembly can be used again at a later time in the case that the distance between the anchors needs further shortening.

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Allowable Subject Matter

6. Claims 23-30, 32-41 and 43 are allowed.
7. Claims 4, 5, 13 and 14 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

8. Applicant's arguments with respect to claims 1, 2, 4-11, 13-20 and 22 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

9. Applicant's submission of an information disclosure statement under 37 CFR 1.97(c) on 6/23/03 prompted the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 609(B)(2)(i). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

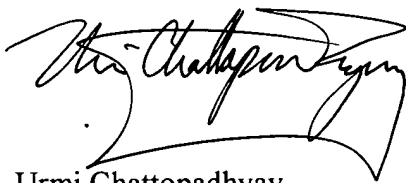
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ms. Urmi Chattopadhyay whose telephone number is (703) 308-8510 and whose work schedule is Monday-Friday, 9:00am – 6:30pm with every other Friday off. The examiner's supervisor, Corrine McDermott, may be reached at (703) 308-2111. The group receptionist may be reached at (703) 308-0858.


Should the applicant wish to send a fax for official entry into the file wrapper the Group fax number is (703) 872-9306. Should applicant wish to send a fax for discussion purposes only, the art unit fax number is (703) 308-2708.



Urmi Chattopadhyay

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October 2, 2003



David J. Isabella
Primary Examiner